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Attorneys for Plaintiffs

James V. Lacy and United States Justice Foundation

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

**James V. Lacy and United States
Justice Foundation,**

Plaintiffs,

vs.

**United States Department of State;
and
DOES 1 through 10, inclusive,**

Defendants.

Case No.:

**Complaint for Declaratory and
Injunctive Relief**
(FOIA, 5 U.S.C. § 552)

1 Plaintiffs James V. Lacy and United States Justice Foundation (USJF) allege as
2 follows:

3 1. Plaintiffs seek injunctive, declaratory, and other appropriate relief against the
4 United States Department of State (State Department) to remedy the State
5 Department's violations of the Freedom of Information Act (FOIA), 5 U.S.C.
6 § 552.

7 PARTIES

8 1. Plaintiff **James V. Lacy** is an individual residing in the City of Dana Point,
9 County of Orange, State of California. Mr. Lacy is domiciled in the Southern
10 Division of California's Central District. 28 U.S.C. § 1391(c)(1). Mr. Lacy is
11 President of USJF. Through counsel, Mr. Lacy requested the records at issue in
12 this complaint on his own behalf and on behalf of USJF.

13 2. Plaintiff United States Justice Foundation (**USJF**) is a nonprofit corporation
14 organized under the laws of the State of California. USJF was formed to educate
15 the general public and litigate significant legal issues confronting the country. In
16 support of this mission, it conducts and supports research and education and
17 disseminates information about important legal and public policy issues through
18 reports, letters, articles, its website, and emails. In April 2020, USJF published a
19 report on Hunter Biden and his associates' Ukraine corruption inquiry, primarily
20 concerning Energy Corporation Burisma. This action concerns research relating to
21 USJF's continued effort to disseminate information on this issue. USJF is a
22 "person" under FOIA. 5 U.S.C. §§ 551(2), 552(a)(3). USJF has its principal place
23 of business in the State of Arizona but maintains an office in the City of Laguna
24 Niguel, County of Orange, State of California.

25 3. Defendant United States Department of State (**State Department**) is sued
26 as an Executive Branch agency of the government of the United States. It is subject
27 to and required to disclose records under FOIA. 5 U.S.C. §§ 551(1), 552(f)(1). It
28 has an office in the Central District of California.

1 4. The true names of Defendant DOES 1 through 10, inclusive, are unknown to
2 Plaintiffs, who therefore bring this action against DOES 1 through 10, inclusive, by
3 such fictitious names and will seek leave of this Complaint to show their true
4 names, identities, and capacities when they have been ascertained.

5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction over this matter pursuant to FOIA, 5 U.S.C.
7 § 552(a)(4)(B), as a federal question under 28 U.S.C. § 1331, and under 28 U.S.C.
8 § 1346 because the United States government is a defendant.

9 6. This Court has authority to grant declaratory relief pursuant to the
10 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

11 7. Because the State Department did not provide Plaintiffs with a
12 determination of the scope of documents it would produce and the exemptions it
13 would claim within 30 working days of receiving the Plaintiffs' requests, described
14 below, Plaintiffs are deemed to have exhausted their administrative remedies and
15 may now seek judicial review. 5 U.S.C. § 552(a)(6)(C)(i).

16 8. Venue is proper under 5 U.S.C. § 512(a)(4)(B) and 28 U.S.C. § 1391(b),
17 (e)(1).

18 9. This case is properly assigned to the Southern Division because more than
19 50 percent of the in-district plaintiffs reside in the Southern Division.

20 **STATUTORY FRAMEWORK**

21 10. FOIA promotes open government by providing every person with a right to
22 request and receive federal agency records. 5 U.S.C. § 522(a)(3)(A).

23 11. In furtherance of its purpose to encourage open government, FOIA imposes
24 strict deadlines on agencies to provide documents responsive to FOIA requests. 5
25 U.S.C. § 552(a)(6)(A).

26 12. An agency must comply with a FOIA request by issuing a determination
27 within 20 business days after receipt of the request. 5 U.S.C. § 522(a)(6)(A)(i).
28

13. The determination “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013).

14. An agency is entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining the “unusual circumstances” that exist to warrant additional time. 5 U.S.C. § 552(a)(6)(B).

15. An agency’s failure to comply with any timing requirements is deemed constructive denial and satisfies the requester’s requirement to exhaust administrative remedies. 5 U.S.C. § 552(a)(4)(B).

16. A FOIA requester who exhausts administrative remedies may petition the court for injunctive and declaratory relief from the agency’s continued withholding of public records. 5 U.S.C. § 552(a)(4)(B).

FACTS COMMON TO ALL CAUSES OF ACTION

A. February 26, 2020 FOIA Request: F-2020-04255

17. On February 26, 2020, Plaintiffs, through counsel, submitted a FOIA request to the State Department’s Office of Information Programs and Services via online submission requesting the following records:

- a. All electronic communication between Hunter Biden and David Wade that reference and/or include the following terms:
 - i. United States Global Leadership Coalition
 - ii. Center for U.S. Global Leadership
 - iii. International Affairs Budget
 - iv. Ukraine

1 18. On March 3, 2020 the State Department acknowledged the request in an
 2 email communication, attached as **Exhibit A**. The State Department assigned a
 3 tracking number, F-2020-04255, and “placed it in the complex processing track
 4 where it will be processed *as quickly as possible*.” (Emphasis added.) The State
 5 Department cited to 22 CFR § 1717.11(h) as authority for this action. Ex. A.
 6 However, the request is far from complex. Instead, it is rather simple, seeking only
 7 emails between two people that include a short list of specific keywords.

8 19. The State Department asserted that it will not be able to respond within 20
 9 days due to “unusual circumstances.” Ex. A. Specifically, the so-called “unusual
 10 circumstances” was “the need to search for and collect requested records from
 11 other Department offices or Foreign Services posts.” Ex. A.

12 20. The State Department has not communicated with Plaintiffs regarding this
 13 request since its March 3, 2020 email.

14 **B. February 26, 2020 FOIA Request: F-2020-04256**

15 21. On February 26, 2020, Plaintiffs, through counsel, submitted a FOIA
 16 request to the State Department’s Office of Information Programs and Services via
 17 online submission requesting the following records:
 18

- 19 a. All electronic communication between Karen Tramontano and
 20 Catherine Novelli that reference and/or include the following terms:
 - 21 i. Burisma
 - 22 ii. Hunter Biden
 - 23 iii. Petro Poroshenk
 - 24 iv. Viktor Shokin
 - 25 v. Mykola Zlochevsky

26
 27 22. On March 3, 2020 the State Department acknowledged the request in an
 28 email communication, attached as **Exhibit B**. The State Department assigned a

1 tracking number, F-2020-04256, and “placed it in the complex processing track
 2 where it will be processed *as quickly as possible*.” (Emphasis added.) The State
 3 Department cited to 22 CFR § 1717.11(h) as authority for this action. Ex. B.
 4 However, the request is far from complex. Instead, it is rather simple, seeking only
 5 emails between two people that include a short list of specific keywords.

6 23. The State Department asserted that it will not be able to respond within 20
 7 days due to “unusual circumstances.” Ex. B. Specifically, the so-called “unusual
 8 circumstances” was “the need to search for and collect requested records from
 9 other Department offices or Foreign Services posts.” Ex. B.

10 24. The State Department has not communicated with Plaintiffs regarding this
 11 request since its March 3, 2020 email.

12 **C. February 28, 2022 FOIA Request: F-2022-05382**

13 25. On February 28, 2022, Plaintiffs, through counsel, submitted a FOIA
 14 request to the State Department’s Office of Information Programs and Services via
 15 online submission requesting the following records from May 1, 2015 through July
 16 30, 2015:

- 17 a. All electronic communication between Hunter Biden and Anthony
- 18 Blinken (then-Deputy Secretary of State to then-Secretary of State
- 19 John Kerry) that reference and/or include the following terms:
- 20
 - 21 i. Burisma
 - 22 ii. Zlochevsky
 - 23 iii. Ukraine
- 24 b. All electronic or written calendar entries, sign-in logs, and meeting
- 25 logs for Mr. Blinken that reference and/or include the following terms:
- 26
 - 27 i. Burisma
 - 28 ii. Zlochevsky

1 iii. Ukraine

2 iv. Hunter Biden

3 26. On March 4, 2022, the State Department acknowledged the request in an
4 email communication, attached as **Exhibit C**. The State Department assigned a
5 tracking number, F-2022- 05382, and “placed it in the complex processing track
6 where it will be processed *as quickly as possible*.” (Emphasis added.) The State
7 Department cited to 22 CFR § 1717.11(h) as authority for this action. Ex. C.
8 However, the request is far from complex. Instead, it is rather simple, seeking only
9 one person’s electronic records that include a short list of specific keywords.
10

11 27. Plaintiffs had requested expedited processing of the request, which the State
12 Department denied. *See* Ex. C.

13 28. The State Department asserted that it will not be able to respond within 20
14 days due to “unusual circumstances.” Ex. C. Specifically, the so-called “unusual
15 circumstances” was “the need to search for and collect requested records from
16 other Department offices or Foreign Services posts.” Ex. C.

17 29. The State Department has not communicated with Plaintiffs regarding this
18 request since its March 4, 2022 email.
19

20 **CAUSES OF ACTION**

21 **I. CAUSES OF ACTION ARISING FROM PLAINTIFFS’ FIRST** 22 **FEBRUARY 26, 2020 REQUEST (F-2020-04255).**

23 **A. First Cause of Action: Failure to Make a Determination**

24 30. Plaintiffs incorporate paragraphs 1 through 30 as if they were fully stated
25 herein.

26 31. The State Department was required to make a determination within 20
27 business days of its receipt of Plaintiffs’ February 26, 2020 request, No. F-2020-
28 04255. 5 U.S.C. § 552(a)(6)(A)(i).

32. The State Department did not make that determination by the deadline. Instead, it asserted that “unusual circumstances” justified an extension. Specifically, it claimed “the need to search for and collect requested records from other Department offices or Foreign Services posts.” This does not sufficiently *explain* the unusual circumstances the State Department claims exist. Plaintiffs are informed and believe that the electronic records they requested are stored on centralized servers. As such, the FOIA-defined “unusual circumstance” of needing “to search for and collect the requested records from field facilities or other establishments to are separate from the office processing the request” does not apply. *See* 5 U.S.C. § 552(a)(6)(B)(ii).

33. Instead, it appears the State Department is using “unusual circumstances” as an excuse to deliberately avoid releasing records relating to corruption involving the President’s son and top State Department officials. This is hardly an unusual circumstance that warrants delay.

34. Even if an “unusual circumstance” existed, the maximum extension is 10 days. 5 U.S.C. § 552(a)(6)(B)(i). Added to the initial 20-day response deadline, this extends the deadline to 30 days. More than 30 days have passed since the State Department received Plaintiffs’ request.

35. Because the State Department has not timely responded to Plaintiffs’ request, Plaintiffs are deemed to have exhausted their administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

36. The State Department should be ordered to make a determination as to whether Plaintiffs requested records subject to disclosure under FOIA.

B. Second Cause of Action: Failure to Conduct Adequate Search

37. Plaintiffs incorporate paragraphs 1 through 37 as if they were fully stated herein.

1 38. Plaintiffs are informed and believe that the State Department has failed to
 2 make a determination with respect to their request because the State Department
 3 has not conducted an adequate search for records responsive their request, in
 4 violation of FOIA. See 5 U.S.C. § 552(a)(3).

5 39. The State Department should be ordered to search for records responsive to
 6 Plaintiffs' FOIA request.

7 **C. Third Cause of Action: Failure to Disclose Non-Exempt Records**

8 40. Plaintiffs incorporate paragraphs 1 through 40 as if they were fully stated
 9 herein.

10 41. Plaintiffs are informed and believe that the State Department possesses
 11 records responsive to their FOIA request that are not exempt from disclosure.

12 42. The State Department is required to disclose those records, and Plaintiffs
 13 have a statutory right to receive them. *See* 5 U.S.C. § 552(d) (Agencies are not
 14 authorized to withhold information unless expressly exempted).

15 43. The State Department should be ordered to disclose records that are not
 16 exempt from disclosure.

17 **II. CAUSES OF ACTION ARISING FROM PLAINTIFFS' SECOND**
 18 **FEBRUARY 26, 2020 REQUEST (F-2020-04256).**

19 **A. Fourth Cause of Action: Failure to Make a Determination**

20 44. Plaintiffs incorporate paragraphs 1 through 30 as if they were fully stated
 21 herein.

22 45. The State Department was required to make a determination within 20
 23 business days of its receipt of Plaintiffs' February 26, 2020 request, No. F-2020-
 24 04256. 5 U.S.C. § 552(a)(6)(A)(i).

25 46. The State Department did not make that determination by the deadline.
 26 Instead, it asserted that "unusual circumstances" justified an extension.
 27 Specifically, it claimed "the need to search for and collect requested records from
 28

1 other Department offices or Foreign Services posts.” This does not sufficiently
2 *explain* the unusual circumstances the State Department claims exist. Plaintiffs are
3 informed and believe that the electronic records they requested are stored on
4 centralized servers. As such, the FOIA-defined “unusual circumstance” of needing
5 “to search for and collect the requested records from field facilities or other
6 establishments to are separate from the office processing the request” does not
7 apply. *See* 5 U.S.C. § 552(a)(6)(B)(ii).

8 47. Instead, it appears the State Department is using “unusual circumstances”
9 as an excuse to deliberately avoid releasing records relating to corruption involving
10 the President’s son and top State Department officials. This is hardly an unusual
11 circumstance that warrants delay.

12 48. Even if an “unusual circumstance” existed, the maximum extension is 10
13 days. 5 U.S.C. § 552(a)(6)(B)(i). Added to the initial 20-day response deadline, this
14 extends the deadline to 30 days. More than 30 days have passed since the State
15 Department received Plaintiffs’ request.

16 49. Because the State Department has not timely responded to Plaintiffs’
17 request, Plaintiffs are deemed to have exhausted their administrative remedies. 5
18 U.S.C. § 552(a)(6)(C)(i).

19 50. The State Department should be ordered to make a determination as to
20 whether Plaintiffs requested records subject to disclosure under FOIA.

21 **B. Fifth Cause of Action: Failure to Conduct an Adequate Search**

22 51. Plaintiffs incorporate paragraphs 45 through 51 as if they were fully stated
23 herein.

24 52. Plaintiffs are informed and believe that the State Department has failed to
25 make a determination with respect to their request because the State Department
26 has not conducted an adequate search for records responsive their request, in
27 violation of FOIA. *See* 5 U.S.C. § 552(a)(3).
28

53. The State Department should be ordered to search for records responsive to Plaintiffs' FOIA request.

C. Sixth Cause of Action: Failure to Disclose Non-Exempt Records

54. Plaintiffs incorporate paragraphs 45 through 55 as if they were fully stated herein.

55. Plaintiffs are informed and believe that the State Department possesses records responsive to their FOIA request that are not exempt from disclosure.

56. The State Department is required to disclose those records, and Plaintiffs have a statutory right to receive them. *See* 5 U.S.C. § 552(d) (Agencies are not authorized to withhold information unless expressly exempted).

57. The State Department should be ordered to disclose records that are not exempt from disclosure.

III. CAUSES OF ACTION ARISING FROM PLAINTIFFS' FEBRUARY 28, 2022 REQUEST (F-2022-05382).

A. Seventh Cause of Action: Failure to Make a Determination

58. Plaintiffs incorporate paragraphs 1 through 30 as if they were fully stated herein.

59. The State Department was required to make a determination within 20 business days of its receipt of Plaintiffs' February 28, 2022 request, No. F-2022-05382. 5 U.S.C. § 552(a)(6)(A)(i).

60. The State Department did not make that determination by the deadline. Instead, it asserted that "unusual circumstances" justified an extension. Specifically, it claimed "the need to search for and collect requested records from other Department offices or Foreign Services posts." This does not sufficiently *explain* the unusual circumstances the State Department claims exist. Plaintiffs are informed and believe that the electronic records they requested are stored on centralized servers. As such, the FOIA-defined "unusual circumstance" of needing

1 “to search for and collect the requested records from field facilities or other
2 establishments to are separate from the office processing the request” does not
3 apply. *See* 5 U.S.C. § 552(a)(6)(B)(ii).

4 61. Instead, it appears the State Department is using “unusual circumstances”
5 as an excuse to deliberately avoid releasing records relating to corruption involving
6 the Secretary of State (from the time when he was Deputy Secretary of State) and
7 the President’s son. This is hardly an unusual circumstance that warrants delay.

8 62. Even if an “unusual circumstance” existed, the maximum extension is 10
9 days. 5 U.S.C. § 552(a)(6)(B)(i). Added to the initial 20-day response deadline, this
10 extends the deadline to 30 days. More than 30 days have passed since the State
11 Department received Plaintiffs’ request.

12 63. Because the State Department has not timely responded to Plaintiffs’
13 request, Plaintiffs are deemed to have exhausted their administrative remedies. 5
14 U.S.C. § 552(a)(6)(C)(i).

15 64. The State Department should be ordered to make a determination as to
16 whether Plaintiffs requested records subject to disclosure under FOIA.

17 **B. Eighth Cause of Action: Failure to Conduct an Adequate Search**

18 65. Plaintiffs incorporate paragraphs 59 through 65 as if they were fully stated
19 herein.

20 66. Plaintiffs are informed and believe that the State Department has failed to
21 make a determination with respect to their request because the State Department
22 has not conducted an adequate search for records responsive their request, in
23 violation of FOIA. *See* 5 U.S.C. § 552(a)(3).

24 67. The State Department should be ordered to search for records responsive to
25 Plaintiffs’ FOIA request.
26
27
28

1 **C. Ninth Cause of Action: Failure to Disclose Non-Exempt Records**

2 68. Plaintiffs incorporate paragraphs 59 through 68 as if they were fully stated
3 herein.

4 69. Plaintiffs are informed and believe that the State Department possesses
5 records responsive to their FOIA request that are not exempt from disclosure.

6 70. The State Department is required to disclose those records, and Plaintiffs
7 have a statutory right to receive them. *See* 5 U.S.C. § 552(d) (Agencies are not
8 authorized to withhold information unless expressly exempted).

9 71. The State Department should be ordered to disclose records that are not
10 exempt from disclosure.

11 **D. Tenth Cause of Action: Arbitrarily Rejecting Plaintiffs' Request to**
12 **Expedite a Response to its Request.**

13 72. Plaintiffs incorporate paragraphs 59 through 71 as if they were fully stated
14 herein.

15 73. Plaintiffs requested expedited processing of this request because they have a
16 compelling need for the records. *See* 5 U.S.C. § 552(a)(6)(E)(i)(I).

17 74. Plaintiffs have a compelling need for the records because they are “primarily
18 engaged in disseminating information” and there is an urgent need “to inform the
19 public concerning actual or alleged Federal government activity.” 5 U.S.C.
20 § 552(a)(6)(E)(v)(I).

21 75. As discussed above, Plaintiffs are “primarily engaged in disseminating
22 information.”

23 76. Additionally, there is an urgent need to inform the public about actual *or*
24 *alleged* Federal government activity relating to corruption involving the then-Vice
25 President’s (now President’s) son and other top government officials, including the
26 person who is now the Secretary of State. One question is to what degree Hunter
27 Biden used or attempted to use his father’s office in order to influence official
28

1 government policy on behalf of a Ukrainian energy company, Burisma Holdings, of
2 which he was a director. This is especially true given the escalation of the conflict
3 between Russia and Ukraine.

4 77. The State Department denied Plaintiffs' request to expedite the request.

5 78. While Plaintiffs had a right to appeal that decision, the State Department's
6 failure to satisfy statutory deadlines discussed above means that Plaintiffs are
7 deemed to have exhausted their administrative remedies. 5 U.S.C.
8 § 552(a)(6)(C)(i), (E)(ii),
9

10 79. The State Department should be ordered expedite its response to this
11 request.

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiffs pray that the Court:

14 1. Order the State Department conduct an adequate search for records
15 responsive to each of Plaintiffs' three requests, make a determination with respect
16 to those records, and disclose records that are not exempt from disclosure.
17

18 2. Order that the State Department expedite Plaintiffs' February 28, 2022
19 request.

20 3. Declare that the State Department did not timely respond to Plaintiffs' three
21 FOIA requests.

22 4. Declare that the State Department did not adequately search for records
23 responsive to Plaintiffs' three FOIA requests.

24 5. Declare that the State Department improperly withheld records responsive
25 to Plaintiffs' three FOIA requests.

26 6. Declare that the State Department improperly denied Plaintiffs' request to
27 expedite its response to its request.
28

1 7. Award Plaintiffs their costs of suit and reasonable attorneys' fees under 5
2 U.S.C. § 552(a)(4)(E).

3 8. Grant such other and further relief as the Court deems proper.

4 9. Reserve jurisdiction over this matter to ensure the State Department's
5 compliance with the Court's orders.
6

7
8 DATE: May 26, 2022

Respectfully Submitted,
LAW OFFICE OF CHAD D. MORGAN

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11 By: _____/s/
12 Chad D. Morgan, Esq.
13 Attorney for Plaintiffs,
14 United States Justice Foundation &
James V. Lacy
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